IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.A No.265 of 2004

Reserved on : November 14, 2007.

Decided on : November 28, 2007.

Harpreet Singh alias Sahil Verma **…Appellant.**

Versus

State of H.P. **…Respondent.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting?

For the Appellant : Mr. Anand Sharma, Advocate.

For the Respondent : Mr. Som Dutt Vasudeva, Additional Advocate General, with Mr. D.S. Nainta, Deputy Advocate General.

Surjit Singh, Judge

Appellant Harpreet Singh alias Sahil Verma, who shall hereinafter referred to as accused, has preferred this appeal against the judgment of the Sessions Court (Fast Track Court) whereby he has been convicted of an offence, under Section 302 IPC and sentenced to undergo rigorous imprisonment for life and pay a fine of Rs.1,00,000/-, in default of payment of fine to undergo rigorous imprisonment for a further period of three years.

2. Police filed a report against the accused, under Section 173 of the Code of Criminal Procedure, accusing him of the offence of murder. The accusation was based on the following allegations. The accused and deceased Riya Rana checked in Sahil Hotel, Chintpurni, on 6th July, 2002, around 7 p.m. An entry was made in register Ex. P-2 maintained at the said hotel, in which the accused wrote his name

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Whether reporters of the local papers may be allowed to see the judgment?

and address in his own hand and also put his signatures as 'Sahil Verma' below his name and address, vide entry Ex. P-3 in the said register, Ex. P-2. They were allotted Room No.201. As per initial entry, they were supposed to check out on 7th July, 2002, as the room was booked only for one night. Next morning, accused ordered for two cups of tea through PW-2 Chain Singh, employed as Sweeper-cum-Waiter in the hotel. He received the tea from PW-2 Chain Singh at the door of Room No.201. The checkout time was 12 in the noon. When there was no indication of the accused and the deceased leaving the room, PW-1 Suresh Kumar, the Manager of the hotel, asked PW-2 Chain Singh, Sweeper-cum-Waiter, to find out if the room was to be vacated or the deceased and the accused wanted to stay for some more time. The accused then came out and went to the Reception Counter. He asked for extension of stay by one day, i.e. upto 8th July, 2002 and paid extra tariff. He also asked PW-2 Chain Singh to provide two cold drinks. PW-2 Chain Singh brought the cold drinks from a nearby shop. Again, the accused received the cold drink bottles from Chain Singh at the door of the room. Accused told PW-1 Suresh Kumar that he and the lady would go to Chamunda temple and return late in the evening. At 2 p.m. on 7th July, 2002, the door of Room No.201, which had been booked by the accused, was found locked from outside. The Manager and the waiter, abovenamed, thought that the accused and the lady had gone to Chamunda locking the room from outside. Even at 10 in the night, the room was found locked. PW-1 Suresh Kumar informed the proprietor of the hotel, namely PW-18 Vinod Kumar, telephonically that the occupants of the room had not returned and the room was locked from outside. The proprietor of the hotel advised PW-1 Suresh Kumar

to wait till next morning, as the room had been booked upto 8th July, 2002 and the check out time was 12 in the noon.

3. On 8th July, 2002, at around 7 a.m., when the room was again found locked from outside, PW-2 Suresh Kumar peeped through the window and saw a body wrapped in a blanket. He immediately informed the officials of Chintpurni Police Post. Police visited the hotel and opened the lock with the duplicate key made available by the owner of the hotel. The body was unwrapped. It was the dead body of the lady, who had checked in alongwith the accused. Incharge of Chintpurni Police Post apprised the SHO, Police Station, Amb, namely PW-20 Harnam Singh. Soon PW-20 Harnam Singh, accompanied by Dy.S.P. and other police officials, reached the spot. He recorded statement (Ex. PW-1/A), under Section 154 of the Code of Criminal Procedure, of PW-1 Suresh Kumar and forwarded the same to the Police Station for the formal registration of the case, vide endorsement Ex. PW-20/A. He then inspected the room, conducted inquest and prepared the reports Ex. PW-7/D and Ex. PW-7/E. A purse was found lying in the room, which contained photocopy of identity card of PW-3 Surinder Kumar, Water Carrier No.3, Punjab Police Academy Phillaur and a parking chit of HRTC Bus Stop Chintpurni. A lady suit, i.e. *Salwar* and shirt were found hanging on the hooks of the door of the room. One *dupatta (chunni)* and one gown were found lying on the double-bed. One pair of high heel sandals was also found in the room. The same were taken into possession vide Memo. Ex. PW-1/B. Getting a clue from the photocopy of the identity card of Surinder, which contained the address of Phillaur also, the police went to his house. He told the police that there lived a lady as tenant in one of the rooms of his

house and her name was Riya Rana. The police then searched the room of Riya Rana tenant in the presence of PW-3 Surinder Kumar and one Vijay Gill. From an attaché-case, lying in that room, a visiting card Ex. P-4 of Sahil Verma was recovered. Since the name tallied with the name entered in the register of the hotel, the police assumed that card to be that of the man who visited the hotel, stayed there in Room No.201 on the night intervening 6th & 7th July, 2002, and left for Ludhiana in search of him, because in the card his address was given to be that of Ludhiana. First, the police went to the address of Ludhiana written in the register by the man who accompanied the deceased lady to Sahil Hotel, Chintpurni. That address was found to be fake. Thereafter, the police went to the address mentioned on the visiting card recovered from the attaché-case of the tenanted room in the house of PW-3 Surinder Kumar. Accused was found there. He was taken into custody.

4. Postmortem of the dead body was conducted by PW-7 Dr. Praveen Bhardwaj, who found no apparent injury on the dead body. However, blood mixed froth was found in the mouth and nostrils of the dead body. Viscera was preserved and sent to the Chemical Examiner, who found no poison therein. On the receipt of the report of the Chemical Examination, PW-7 Dr. Praveen Bhradwaj opined that the cause of death was asphyxia. While in the witness box, he stated that asphyxia could have been caused by smothering.

5. Sessions Court, on receiving the case by commitment from the concerned Judicial Magistrate, charged the accused with an offence punishable under Section 302 IPC and tried him for the said offence. Finally, the trial Court convicted and sentenced the accused, as aforesaid.

6. Learned counsel representing the accused made a number of submissions in support of his contention that the evidence on record was of doubtful nature and did not prove the alleged circumstances connecting the accused with the commission of the crime beyond reasonable doubt nor did such circumstances make a complete chain. His first submission was that the witnesses had improved upon the version, which they gave to the police during the course of investigation. He drew the attention of the Court to the so called improvements made by the witnesses, which are as follows:

(a) In the Court PW-1 Suresh Kumar stated that the accused accompanied by the deceased reached the hotel at 7 p.m., but in the statement Ex. PW-1/A, with which he was duly confronted, the time of their arrival is written as 10 p.m. Again, in the Court he stated that he checked the room at 2 p.m. and again at 10 p.m. on 7th July, 2002 and both the times he found it locked from outside but these facts do not find mention in his statement Ex. PW-1/A and he was duly confronted with the aforesaid omissions. Further, in his statement in the Court, he stated that there was froth and blood around the mouth of the deceased but this fact also does not appear in Ex. PW-1/A, his statement to the police. Furthermore, in the Court he stated that police people from Chintpurni Police Post visited the spot at 8 a.m. and opened the lock of the room with the key which was available with the owner of the hotel, but this fact also does not find mention in

his statement Ex. PW-1/A nor has the owner of the hotel testified this fact.

(b) PW-2 stated that the tea and cold drinks ordered for by the accused were received by him outside the room at the door but the fact does not find mention in his statement, under Section 161 of the Code of Criminal Procedure Ex. DA, with which he was duly confronted.

7. As regards the alleged improvements in the testimony of PW-1 Suresh Kumar, we are of the view that the same are insignificant. There is no doubt that in the statement, under Section 154 of the Code of Criminal Procedure, Ex. PW-1/A, the time when the deceased and the accused checked in the hotel is recorded as 10 p.m. and in his deposition in the Court as PW-1, Suresh Kumar stated that they checked in at 7 p.m. but this variation makes no difference in view of the admission by the accused in his statement, under Section 313 of the Code of Criminal Procedure, that he did check in the hotel on the relevant date and the time was 10 p.m.

8. Omission in the statement, Ex. PW-1/A, that the witness noticed at 2 p.m. and again at 10 p.m. on 7th July, 2002, that the room occupied by the accused and the deceased was locked from outside also in no way affects the credibility of the evidence with respect to the circumstances appearing against the accused, viz. he checked in the hotel in the company of the deceased on the night intervening 6th & 7th July, 2002, got the booking for the room extended by a day, made an entry in the register at the time of initial checking in and left the hotel on 7th July, 2002, particularly when these facts are admitted

by the accused in his statement, under Section 313 of the Code of Criminal Procedure.

9. The next alleged improvement is also of no consequence. No doubt, in Ex. PW-1/A it is not recorded that there was blood mixed froth in the mouth and nostrils of the deceased and the witness, in his testimony as PW-1, testified this fact but this can also not be taken to be an improvement when there is other evidence, proving to the hilt that froth mixed blood was there in the mouth and nostrils of the deceased. Reference in this behalf may be made to the inquest report Ex. PW-7/E and postmortem report Ex. PW-7/B. Similarly, the omission in the statement, Ex. PW-1/A, about the visit of officials of Police Post Chintpurni to the hotel at 8 a.m. on 8th July, 2002, and the opening of the room with the key available with the owner of the hotel and the non-corroboration of the testimony of PW-1 Suresh Kumar to this effect by the owner of the hotel, namely PW-18 Vinod Kumar, is also insignificant, because, as already noticed hereinabove, the circumstances indicative of the involvement of the accused in the commission of the crime are not denied by him in his statement, under Section 313 of the Code of Criminal Procedure.

10. The so-called improvements in the testimony of PW-2 Chain Singh with regard to supply of tea and two cold drinks to the accused on his demand and the accused taking the delivery thereof at the door of the room, does not render the testimony of PW-2 Chain Singh with regard to this fact doubtful, because it is not the case of the accused that the witness entered the room with the tea and the cold drinks and saw the deceased alive. He has denied that he had ordered for tea or cold drinks and PW-2 Chain Singh delivered the same to him at the door of the room.

11. It was next submitted by the learned counsel for the accused that the evidence of handwriting expert, namely PW-14 Vishveshwar Sharma, was not enough to hold that the entry Ex. P-3 in the register, Ex. P-2, was in the hand of the accused. Trial Court did not question the accused with respect to the aforesaid entry while examining him under Section 313 of the Code of Criminal Procedure. Therefore, this Court recorded the supplementary examination of the accused, under Section 313 of the Code of Criminal Procedure. The accused admitted that the entry Ex. P-3 in register Ex. P-2 was in his hand and also bore his signature. In this entry, the address of the accused is also written, which means it too is written in his hand. The address is incorrect, per deposition of PW-20 Harnam Singh, who testified that when he went to Ludhiana in search of the accused on the address mentioned in entry Ex. P-3, he found that the address was fake. The accused when questioned about this fact in his supplementary statement, under Section 313 of the Code of Criminal Procedure, recorded by this Court, stated that he wrote wrong address on the asking of the deceased. Now, when the accused admits that entry Ex. P-3 is in his hand, the submission that the evidence of the handwriting expert is of weak type becomes irrelevant.

12. Further, it was submitted that a steel glass was found on the spot but it was not sent to fingerprints expert for comparison with the standard fingerprints of the accused. This submission is also of no avail to the accused, because he does not deny his presence in the room alongwith the deceased on the night intervening 6th & 7th July, 2002 and the evidence on record suggests that the deceased had died before 2 p.m. on 7th July, 2002.

13. The evidence, which proves that the deceased must have died before 2 p.m. on 7th July, 2002, consists of the testimony of PW-1 Suresh Kumar, PW-2 Chain Singh, PW-18 Vinod Kumar and PW-7 Dr. Praveen Bhardwaj, who conducted the postmortem. PW-1 Suresh Kumar testified that the room occupied by the accused and the deceased was found locked from outside at 2 p.m. and again at 10 p.m. on 7th July, 2002 and that when it was found locked even on the next morning at 7 a.m., he peeped through the window of the room and noticed that a body was lying wrapped in a blanket. Testimony of PW-2 Chain Singh proves that when he went with tea and cold drinks to Room No.201, on being ordered by the accused, the latter received both the tea and the cold drinks from him at the door of the room, meaning thereby that he had something to hide and was, therefore, taking precautions that no one entered the room till he left and even long thereafter, because before leaving not only did he pay the tariff for one more day saying that the room would be vacated the next day, but also locked it from outside.

14. Testimony of PW-7 Dr. Praveen Bhardwaj and the postmortem report Ex. PW-7/B show that the deceased had died between 5 p.m. on 6th July, 2002 and 5 p.m. on 7th July, 2002. The testimony of this witness, combined with the testimony of PW-1 Suresh Kumar and PW-2 Chain Singh, proves that the deceased had died on the night intervening 6th & 7th July, 2002. And the accused, per his own admission, was present with the deceased in the room during the aforesaid period.

15. No explanation has been offered by the accused as to the cause of death of the deceased. In the absence of any

explanation, a presumption can be drawn, under Section 114 of the Evidence Act, that he is involved in the killing of the deceased.

16. It was also urged that no signs of smothering were found and this fact falsified the theory that the deceased had been done to death by smothering. Many signs of smothering were found by PW-7 Dr. Praveen Bhardwaj while conducting the postmortem examination. He found the right side of the heart full of blood and the left side empty, which is one of the important signs of death by asphyxia caused by suffocation/smothering. Blood mixed froth was found in the mouth, nostrils and trachea, which is again a sign of smothering. No doubt, normally a person sought to be smothered puts up resistance and struggle and signs of such resistance and struggle are available at the scene of the crime. It is true that in the present case except for a minor injury on one of the eyes no such signs were found in the room but that may be due to the reason that the deceased was smothered while in deep sleep or when she was under the influence of some intoxicant drug. It has been testified by PW-6 Ashok Kumar, with whom the deceased remained employed for about six months upto 23rd June, 2002, that she (the deceased) used to take drugs and in fact he threw her out of the job when he saw her taking some pills on 22nd June, 2002 and also because she did not have good moral character.

17. Another submission made by the learned counsel for the accused was that after the accused had locked the room from outside the key should have been found with him but admittedly the key was not with him. It is true that the key of the room was not found with the accused. It is also true that it was supposed to be with him if he had locked the room. But, the non-recovery of the key from the accused is

not a pointer to his innocence. He was arrested on 9th July, 2002 or say 2 days after he disappeared from Chintpurni. There was enough time for him to dispose of the key one way or the other. From the evidence it appears that perhaps the Investigating Officer also made no effort to recover the key from the accused. For this lapse on the part of the Investigating Officer, it cannot be presumed that he (accused) did not lock the room and that is why the key of the lock was not found with him.

18. It was also submitted that there was no motive for the accused to have killed the deceased. It is by now well settled that absence of motive by itself is no ground for acquittal of an accused of murder, especially when other evidence on record sufficiently proves his involvement.

19. Evidence on record, as discussed hereinabove, proves the following circumstances to the hilt:

(a) The accused was in the company of the deceased on the night intervening 6th & 7th July, 2002, in Room No.201 of hotel Sahil.

(b) Deceased died in Room No.201 of hotel Sahil on the night intervening 6th & 7th July, 2002, when the accused was with her in the said room.

(c) The deceased did not die a natural death.

(d) The accused has not explained how did the deceased die.

(e) The accused did not vacate the aforesaid room in the hotel on 7th July, 2002, even though, per initial entry Ex. P-3 in register Ex. P-2, he and the deceased were supposed to have checked out that day. Instead the accused asked PW-1 Suresh Kumar that his and deceased's stay be extended by a day and also paid the tariff for one more day.

(f) The accused disappeared from Chintpurni and went to Ludhiana, after locking the aforesaid room of the hotel from outside.

20. The aforesaid circumstances make a complete chain and are suggestive of one and only one hypothesis that the deceased was killed by the accused. Consequently, the appeal is dismissed.

(Surjit Singh), J

November 28, 2007(sd) **(Surinder Singh), J**